DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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Washington, DC 20002

DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS Petitioner, v. ALFREDO ENRIQUEZ-MORALES Respondent.	Case No.: CR-C-07-100080 (ALJ Goode)

FINAL ORDER

In December 2006, Respondent applied for a home improvement contractor and salesperson license. On July 23, 2007, the Government denied Respondent's application, because he allegedly made a material misrepresentation in his response to an agency request for additional information in support of his application. *See* the July 23, 2007, Notice of Denial of Application for License ("Notice"). On September 7, 2007, Respondent filed an appeal to challenge the denial of his application. A status conference was scheduled for October 5, 2007; however, it was rescheduled to November 2, 2007, because Respondent was ill.

At the November 2, 2007, status conference, Respondent Alfredo Enriquez-Morales represented himself and the Government was represented by Geraldine Owens. Respondent complained bitterly that the Business and Professional Licensing Administration ("BPLA") was uncooperative, non-responsive and discriminatory. Respondent indicated that he applied for his Basic Business License ("BBL") approximately one year earlier and could no longer afford to live without an income. Respondent contended in his filings and in open court that BPLA had discriminated against him based on his ethnic origin and sexual preference. The parties agreed to

hold an evidentiary hearing on November 16, 2007, and attempt to settle this matter in the interim. I issued an Order on November 7, 2007, that set the evidentiary hearing for November 16, 2007, and required the parties to file and exchange witness lists and all documents to be used as exhibits by November 12, 2007.

When the evidentiary hearing convened, the Government was represented by Geraldine Owens. Respondent represented himself and brought Barcley Greene as a witness. At the start of the hearing, Government announced that it was not prepared to go forward because it misunderstood the November 7, 2007, Order to be scheduling a status conference, not an evidentiary hearing. The Government also acknowledged that it did not comply with the provision of the Order requiring the filing and service of witness lists and documentary evidence by November 12, 2007. The Government moved to continue the hearing. Respondent objected to any further continuances as his application had now been pending approximately one year and additional delay would cause him substantial hardship. I denied the Government's motion to continue the hearing, and went off the record to allow the Government to see if Mr. Schilling, BPLA Administrator, was available to testify. Ms. Owens returned to the hearing with Radeena Washington, Program Manager, and Adrienne Wilson, Supervisor. These officials explained how and why the decision to deny Respondent's application was made; however, Ms. Owens specifically said they were not intended to be witnesses and asked that Ms. Washington and Ms. Wilson be excused from the hearing room. The Government presented no witnesses or documents as evidence. I admitted Respondent's exhibits 200-210 and received the testimony of Respondent and Mr. Greene. Based on my assessment of the witnesses' credibility and the entire record herein, I make the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On or about December 18, 2006, Respondent filed an application for a home improvement contractor's BBL. Exhibit 206. On January 18, 2007, the Government directed Respondent to "cure" his application by providing a Letter of Good Standing from the Corporations Division and "current leases for 1515 O Street, N.W., #210 and 1454 Belmont Street, N.W., #4." Exhibit 202. On February 13, 2007, Respondent submitted the sought-after documents. Exhibit 203.

2. At all times relevant, Barclay Greene, Respondent's domestic partner[1], owned unit 210 at 1515 O St., NW. While Respondent lived there, he did not have a property interest in the unit. In order to respond to the Government's January 18, 2007, request for more information, Mr. Greene entered a lease agreement with Respondent for unit 210, effective July 1, 2006. Exhibit 200.

3. At all times relevant, Respondent and Mr. Greene jointly owned unit 4 at 1454 Belmont St., NW. Mr. Greene and Respondent were unsure how to proceed as Respondent had been told by the Government's investigators (*see* exhibit 206), that he needed a lease for this unit, despite the fact Respondent was a joint owner. The investigators asked Claimant where he stored his tools. Claimant explained that he kept his tools in his truck, which was parked in a space obtained from the condominium. The investigator's implied that this could be the basis for

[1] I am using this phrase to describe the relationship between Respondent and Mr. Greene as they explained it. However, I am not making a legal determination that they are "domestic partners" under District of Columbia law. *See* D.C. Code, 2001 Ed. § 46-601, *et seq.*

the sought-after lease. Mr. Greene entered a lease with Respondent granting him monthly tenancy to the parking space. Exhibit 201.

4. The Bylaws governing the condominium at 1454 Belmont St. allow Respondent to claim a portion of his unit as a home office and to conduct strictly clerical services at the unit. Exhibit 204.

5. Respondent originally incorporated his business on September 16, 2005. Exhibit 205. A Certificate of Reinstatement was issued to Respondent's business on December 18, 2006. Exhibit 206A. Respondent had liability insurance coverage for his business effective December 14, 2006. Exhibit 209. Respondent also had a Home Improvement Surety Bond, effective November 28, 2006. Exhibits 207 and 208.

6. On July 23, 2007, the Government issued a "Notice of Denial of Application for License." Exhibit 203. Specifically, the Government alleged that Respondent had vacated unit 210 at 1515 O St. in July 2006, and that the lease submitted for that property was not a lease used by Keener Management (presumably the property manager), and that the lease for 1454 Belmont St. lacked an end date and was for a parking space. Therefore, the Government concluded that Respondent had made a material misstatement or false statement in his BBL application. Exhibit 203.

III. CONCLUSIONS OF LAW

Respondent argues that as the Government put on no evidence in support of its case and he presented a preponderance of evidence to establish that he did not make a material

misstatement or false statement in his BBL application, he is entitled to issuance of his license. The Government did not present an argument in opposition to Respondent's contention.

The Notice denying Respondent's application for a BBL rested solely upon the Government's determination that Respondent allegedly made a material misrepresentation or false statement in his application by submitting the contested leases. Specifically, the Government alleged that Respondent had vacated 1515 O St. in July 2006, and that the lease submitted for that property was not a lease used by Keener Management Company (presumably the property manager), and that the lease for 1454 Belmont St. had no end date and was for a parking space. Respondent countered with evidence establishing that: 1) while he had purchased the unit at 1454 Belmont St. by July 2006, it was being renovated and he did not vacate 1515 O St. until after his BBL application had been filed; 2) the lease submitted for 1515 O St. was issued by Mr. Greene, the owner of the property (such that Keener Management Company would not be involved in the lease); 3) as the owner of 1454 Belmont St. he would not have a lease for the property and that the Government investigators suggested a lease for the parking space would suffice; and 4) the lease for 1454 Belmont St. clearly notes that it is for a parking space so there has been no misrepresentation.

The law prohibits the Government from issuing a home improvement contractor's license to any applicant if the applicant has made a "[m]aterial misstatement in application for [his/her] license." 16 DCMR 813.3(a). *See* also 16 DCMR 801.10 (Any false statement contained in the application for license as a salesperson shall be grounds for the denial, suspension or revocation of that license). Additionally, the regulations allow the Government to investigate applicants for a home improvement license to determine whether the applicant is qualified to obtain a license, has complied with the laws governing the home improvement business, and to verify the identity

of the applicant. 16 DCMR 805.1 and 805.2. Finally, whenever the Government decides to denial a home improvement license application it shall provide notice to the applicant that "state[s] the ultimate facts constituting each violation or other basis for the action proposed, . . ." 16 DCMR 814.2.

The Government presented no evidence to support its decision to deny Respondent's application for a home improvement contractor's license. The Government has not met its burden to establish by a preponderance of evidence that the denial was an appropriate exercise of its enforcement authority. Further, Respondent presented overwhelming evidence to establish that the Government's assessment was erroneous. In fact, even if the Government had presented evidence to establish that its factual assertions were correct (Respondent had vacated 1515 O St. in July 2006, the lease for the property was not with Keener Management Company, the lease for 1454 Belmont St. lacked an end date and was for a parking space), this evidence would not support a conclusion that Respondent had made a "material misstatement in [his] application for [a] license." 16 DCMR 813.3(a). *See also* 16 DCMR 801.10.

As noted above the Government is given authority to investigate applicants to establish whether the applicant is qualified to obtain a license, has complied with the laws governing the home improvement business, and to verify the identity of the applicant. 16 DCMR 805.1 and 805.2. These regulatory provisions limit the investigative authority of the Government to the identified material aspects of an application (16 DCMR 813 sets forth other bases for denial of an application, none of which were relied upon by the Government). Clearly, the Government may only use its investigative power to ascertain that which is material and relevant to an application. There certainly is no regulatory basis for the Government to investigate an applicant's personal background on matters that are unrelated to a pending application.

Therefore, whether Respondent had vacated 1515 O St. in July 2006, whether the lease for the property was with Mr. Greene (as compared to Keener Management Company), and whether the lease for 1454 Belmont St. lacked an end date and was for a parking space is irrelevant to his application for a home improvement contractor's license. Specifically, the Government does not contend that Respondent did not live at 1515 O St. and/or 1454 Belmont St. during the relevant times in 2006 and 2007, so this information lacks relevance to Respondent's identification or qualifications. As the information is irrelevant, it cannot be the basis to deny Respondent's application. 16 DCMR 805.1 and 805.2. Additionally, there is no relevance to whether Respondent's lease for 1454 Belmont St. lacked an end date. Further, if the Government did not understand that Respondent owned 1454 Belmont St., such that it expected Respondent to submit a lease for the living unit not the parking space, the Government should have asked Respondent to explain the situation. Denying the application for these bases was not an acceptable exercise of the Government's enforcement authority under this regulatory scheme.

Therefore, I conclude that there is no evidence on the record to support the Government's denial. The Government's July 23, 2007, denial of Respondent's application for a home improvement contractor's license is invalidated.

The situation in this case is comparable to that in *Paschall v. District of Columbia Dep't of Health,* 871 A.2d 463 (D.C. 2005). The statute in that case – the Nursing Home and Community Residence Facility Residents' Protection Act of 1985, D.C. Code, 2001 Ed. § 44-1001.01 *et seq.* – regulates the discharge of patients from nursing homes. Like the regulatory scheme at issue here, it requires notice setting forth the predicate for an enforcement action, establishes permissible grounds for an enforcement action, and provides for an administrative hearing at which an aggrieved party can challenge the enforcement decision.

In *Paschall,* a covered facility had discharged a resident without giving the required advance notice, and he therefore could not request a hearing before the discharge occurred. 871 A.2d at 465. The statute contains an express right of action for a resident to seek an injunction from Superior Court against a facility that violates the statute, D.C. Code, 2001 Ed. § 44-1004.01, but contains no express authority for an Administrative Law Judge to order the readmission of a resident who has been discharged without advance notice. Despite the absence of such express authority, the Court of Appeals in *Paschall* concluded that there was a "strong case for concluding that the Act implicitly authorizes an ALJ to order the remedy of readmission." 871 A.2d at 469.

On this record, I have authority to order the Government to issue Respondent a license, even though the governing statute does not explicitly vest that authority in this administrative court. The regulations governing home improvement applications require that the application "state the ultimate facts constituting each violation or other basis for the action proposed." 16 DCMR 814.2. Thus, the Mayor has an affirmative obligation to act on an application and if BPLA is denying an application the notice shall be given in writing, setting forth specifically the grounds therefore.

In this case, as almost one year has passed since Respondent filed his application, the Government's time to act has expired and BPLA has issued a notice of denial that constitutes all grounds for denial of Respondent's BBL application.[2] Given my findings of fact and conclusions of law concerning BPLA's denial of Respondent's application for a home improvement contractor and salesperson license, there is no lawful basis on this record to deny

[2] This decision has no bearing on any post-issuance enforcement action that the Government may take against Respondent for newly discovered statutory or regulatory violations, if any.

Respondent's license. As I clearly have authority to invalidate the Notice, the concomitant authority to order the Government to comply with the governing regulatory scheme is implicitly authorized. The Government must now comply with the governing regulatory scheme and grant Respondent a license. *See also Hamilton-El v. CCNV*, Case no. HS-P-07-200278 (OAH 2007); *DCRA v. Kiev Pawn*, Case No. CR-B-06-800043 (OAH 2006).

Therefore, based upon the entire record in this matter, it is, this 21st day of November 2007

ORDERED that the Government's July 23, 2007, Notice to deny Respondent's application for a Basic Business License is hereby **INVALIDATED**; it is further

ORDERED that no later than close of business, November 27, 2007, the Government shall issue to Respondent a home improvement contractor and salesperson license; it is further

ORDERED that the appeal rights of persons aggrieved by this order are set forth below.

November 21, 2007

/SS/
Jesse P. Goode
Administrative Law Judge